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# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

# **ORIGINAL**

| In the Matter of   |   |
|--|---|
| Federal-State Joint Board on<br>Universal Service            | ) CC Docket 96-45   |
| NPCR, INC. d/b/a NEXTEL PARTNERS                             | RECEIVED  |
| Petition for Designation as an                               | APR 2 4 2003  |
| Eligible Telecommunications Carrier in the State of Arkansas | FEDERAL COMMUNICATIONS COMMISSION OFFICE OF IVE SECRETARY |

# PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF ARKANSAS

NPCR, INC. d/b/a NEXTEL PARTNERS

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## **SUMMARY**

Nextel Partners is seeking designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act of 1934, **as** amended (the "Act") in certain Designated Areas in the state of Arkansas for certain non-rural ILEC wire centers covered in their entireties.

Designation of Nextel Partners as an Eligible Telecommunications Carrier is appropriate, since Nextel Partner meets all of the criteria set forth in Section 214 of the Act, and in Part 54 of the Commission's Rules.

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|  |                   |  |

# PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF ARKANSAS

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), by its undersigned counsel and pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (the "Act"), hereby submits this Petition for Designation ("Petition") as an eligible telecommunications carrier ("ETC") in the State of Arkansas. Nextel Partners is licensed to, and provides, wireless telecommunications services throughout certain designated areas (the "Designated Areas") of the State of Arkansas.' Nextel Partners seeks designation as an ETC for covered wire centers of a non-rural incumbent LEC? As demonstrated herein, and certified in **Attachment 1** to this Petition, Nextel Partners meets all of the requirements for designation as an ETC in each of these Designated Areas and respectfully requests that the Commission promptly grant this Petition.

<sup>&</sup>lt;sup>1</sup> Nextel Partners is the **A** and/or B and C Block EA licensee throughout the State of Arkansas.

<sup>&</sup>lt;sup>2</sup> A list of the non-rural incumbent LEC wire centers for which Nextel Partners seeks designation in this Petition (also referred to herein as the "Designated Areas") is set forth as **Attachment 1** hereto.

## I. Nextel Partners Meets All the Requirements for Designation as an Eligible Telecommunications Carrier to Serve the Designated Areas in the State of Arkansas

Under Section 214(e)(6) of the Act, 47 U.S.C. § 214(e)(6), the Commission, consistent with the public interest, convenience and necessity, may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of Section 214(e)(1). The Commission has previously identified the showing that a carrier must make to meet the requirements of Section 214(e)(6). As demonstrated below, and as set forth in the declaration of Donald Manning, Attachment 7 hereto, Nextel Partners meets each of these requirements.

### A. Nextel Partners Will Provide Service Over its Own Facilities

Nextel Partners has sufficient wireless network infrastructure facilities and capacity to provide supported services throughout the Designated Areas in the State of Arkansas over its own facilities.

### B. Nextel Partners Offers All Reauired Services and Functionalities

Nextel Partners offers, or will offer upon designation as an ETC in the Designated Areas, all of the services and functionalities required by Section 54.101(a) of the Commission's Rules, 47 C.F.R. § 54.101(a), including the following:

**1.** <u>Voice grade access to the public switched telephone network.</u> Voice grade access to the public switched telephone network ("PSTN") means the ability to make and receive traditional voice phone calls, within a bandwidth of approximately 3500 Hertz.<sup>4</sup> Nextel

<sup>&</sup>lt;sup>3</sup> Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(3)(6) of the Communications Act, FCC 97-419 (released December 29, 1997).

<sup>&</sup>lt;sup>4</sup> See Federal-State Joint Board on Universal Service, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776 at 8810-11("USF Order").

Partners' voice grade access enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call. The bandwidth for Nextel Partners' voice grade access is, at a minimum, 300 to 3,000 Hertz.

- **Local Usage.** As part of the voice grade access to the PSTN, an ETC must provide local calling. Nextel Partners, through its wireless network, provides subscribers the ability to send and receive local phone calls both over Nextel Partners' network and through interconnection with the incumbent local exchange carriers serving the Designated Areas. Local usage is included in all of Nextel Partners' calling plans. As a designated ETC, Nextel Partners will comply with any and all minimum local usage requirements adopted by the Commission.
- **a.** Dual tone multi-frequency ("DTMF") signaling or its functional equivalent. DTMF signaling allows carriers to provide expeditious call setup, and enables modem usage.' Nextel Partners uses out-of-band signaling and in-band multifrequency signaling that is functionally equivalent to DTMF.
- 4. <u>Single-party service or its functional equivalent</u>. Nextel Partners provides customers with single-party access for the duration of every phone call. Nextel Partners does not provide "multi-party" or "party line" services.
- **5.** Access to 911 and E911 emergency service. The Commission has declared that access to emergency services is essential! Nextel Partners provides universal access to the 911 system for its customers, and has implemented and will continue to implement E911 services consistent with the Commission's Rules and Orders and local PSAP requests. As

<sup>&</sup>lt;sup>5</sup> *USF Order* at 8814.

<sup>&</sup>lt;sup>6</sup> *Id.* at 8815.

of February 1,2003, Nextel Partners has received requests for, and has launched, 31 Arkansas counties at Phase I and has 6 pending requests for Phase II E911 service.

- **6.** Access to ouerator services. Nextel Partners offers all of its customers access to operator services, in accordance with the Commission's requirements.
- I. Access to interexchange service ("IXC"). Nextel Partners customers can use the Nextel Partners network for IXC access to place long distance phone calls. Access is through interconnection agreements with several IXC carriers. Nextel Partners' customers can also reach their IXC of choice by dialing the appropriate access code.
- **8.** Access to directory assistance. All Nextel Partners customers receive access to 411 directory assistance, service through the Nextel Partners network.
- Commission's Rules, Nextel Partners, upon designation as an ETC, will make available to qualifying low-income customers a free solution that assists these low-income persons to control their telephone costs.' Nextel Partners is fully capable of providing such a toll limiting service to its customers. Nextel Partners does not presently offer a toll limitation feature, because it is not an ETC. Upon designation as an ETC, Nextel Partners will participate in, and offer, LifeLine and Link-Up programs as required by the Commission's Rules. In accordance with Section 54.401(b) of the Commission's Rules, 47 C.F.R. § 54.401(b), Nextel Partners will not disconnect Lifeline service for non-payment of toll charges.

# C. The Arkansas Public Service Commission Does Not Regulate CMRS Service for Puruoses of Making ETC Determinations

A carrier seeking designation as an ETC must typically request such a designation from the applicable state regulatory commission. However, the Arkansas Public Service Commission

<sup>&#</sup>x27;Id. at 8821-22.

(the "APSC") does not regulate CMRS carriers such as Nextel Partners for the purpose of making ETC determinations. The Arkansas legislature has specifically removed CMRS carriers from the jurisdiction of the APSC with only very specific exceptions, and these exceptions *do not* include making determinations as to a CMRS carrier's eligibility for designation as an ETC.

Arkansas Act 77 of 1997, referred to as the "Telecommunications Regulatory Reform Act of 1997" and codified as Chapter 17, subchapter 4, Sections 23-17-401 *et seq.* of the Arkansas Code Annotated (the "Code"), provides in pertinent part as follows:

(g) The commission [viz., the APSC], except as provided in this subchapter with respect to universal services, shall have no jurisdiction to regulate commercial mobile services or commercial mobile service providers.

Code § 23-17-411(g) (emphasis supplied)! This provision was interpreted in 1998 by the Court of Appeals of Arkansas in *Alltel Mobile Communications, Inc.*, Order No. CA97-826, 63 Ark. App. 197, 97 S.W.2d 884, 1998 Ark. App. LEXIS 660 (Ct. App. Ark. 1998). In that case, appellants appealed two orders of the Arkansas Public Service Commission (Order Nos. 1 and 2) that sought to compel CMRS carriers to file annual reports to the APSC and pay annual fees in accordance with Code Sections 23-3-109 and 23-3-110. The Court stated in pertinent part:

By its clear wording, section 11(g) terminated the Commission's traditional regulatory authority over commercial mobile-service providers *except as specifically set forth in Act* 77. No reference is made in Act 77 to sections 109 and 110. Accordingly, the Commission no longer has jurisdiction to require commercial mobile-service providers to comply with these sections, and Orders No. 1 and No. 2 are reversed.

 $<sup>^8</sup>$  All of the referenced Arkansas Code Provisions are set forth in full in  $\underline{\textbf{Attachment 3}}$  hereto.

<sup>&</sup>lt;sup>9</sup> Alltel Mobile Communications, Inc. order is attached as <u>Attachment 4</u> hereto.

<sup>&</sup>lt;sup>10</sup> Code Sections 23-3-109 and 23-3-110 pertain to the filing of "Annual Statements **of Gross** Earnings" by utilities, and the payment to the state of **an** "Annual Fee" not to exceed 2/5ths of 1% of each filer's gross earnings.

Alltel Mobile Communications, 63 Ark. App. 197 at 203 (emphasis supplied). Thus, unless the legislature specifically set forth in Act 77 authority for the APSC to exercise jurisdiction over CMRS carriers for a particular transaction, no such authority exists.

Nowhere in the relevant statutory Chapter 17, subchapter 4 does the legislature confer on the state commission the right to designate CMRS carriers as ETCs. In fact, although there is a section (*viz.*, Section 23-17-405) within the statutory subchapter that addresses the commission's power to designate ETCs, CMRS carriers are clearly *not* included within this power. In fact, Chapter 17, subchapter 4 of the Code defines "Eligible Telecommunications Carrier" as "the *local exchange carrier* determined in accordance with § 23-17-205. But the Code's definition of "local exchange carrier" *specifically excepts* CMRS carriers:

(19) "Local exchange carrier" means a telecommunications provider of basic local exchange service and switched-access service. The term does not include commercial mobile service providers[.]

Code § 23-17-403(19) (emphasis supplied).

Thus, CMRS carriers such as Nextel Partners are not subject to regulation in the State of Arkansas for purposes of determinations concerning eligibility for ETC status. Nextel Partners accordingly requests that the FCC designate Nextel Partners as "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a state commission" pursuant to 47 U.S.C. § 214(e)(6).

#### D. Nextel Partners Will Advertise the Availability of Supported Services

Nextel Partners will advertise the availability of the above-described services and the charges therefore using media of general distribution, in accordance with the requirements of

<sup>&</sup>lt;sup>11</sup> Code § 23-17-403(10) (emphasis supplied). This appears to be a typographical error in the statutory text: Section 23-17-205 relates to cooperatives, whereas Section 23-17-405 relates to (the presumably correct subject matter) Eligible Telecommunications Carriers.

Section 54.201(d)(2) of the Commission's Rules, 47 C.F.R. § 54.201(d)(2). Nextel Partners currently advertises the availability of its services, and will do so for each supported service on a regular basis, in newspapers, and magazines, or on radio and television, that constitute media of general distribution in Designated Areas of the State of Arkansas.

# 11. Nextel Partners Requests Designation Throughout Each of the Designated Areas Within Its Service Coverage

Nextel Partners is not a rural telephone company as defined in Section 153(37) of the Communications Act, 47 U.S.C. § 153(37). Accordingly, Nextel Partners is required to describe the geographic area(s) within which it requests designation as an ETC. Nextel Partners requests designation as an ETC throughout each of the Designated Areas within the State of Arkansas, as set forth in **Attachment 1**. As noted above, these Designated Areas consist of wire centers of a non-rural incumbent LEC.<sup>12</sup> In **Attachment 5** hereto, Nextel Partners provides a map of its service area, within which Nextel Partners provides service to the entirety of the Designated Areas listed in **Attachment 1** hereto.<sup>13</sup>

# III. In Accordance with 47 U.S.C. § 214(e)(6), Nextel Partners Is Entitled to Be Designated as an ETC in Non-Rural Wire Centers

To the extent Nextel Partners is serving non-rural wire centers and providing the services set forth in Section I of the present Petition as required by Section 214(e) the Act and the FCC's implementing rules, as set forth in 47 C.F.R. Section 54.201(c), Nextel Partners is entitled to be

<sup>&</sup>lt;sup>12</sup> Wireless service is inherently affected by conditions unique to wireless service providers and which conditions do not affect wireline service providers. Geography, atmospheric conditions and man-made radiofrequency and physical structure interference may at times reduce or increase a wireless user's coverage area. At the same time, the mobility and functionality of wireless phone service adds immense benefits and convenience to wireless users that wireline providers cannot match.

<sup>&</sup>lt;sup>13</sup> For purposes of this Petition, the coverage map provided in <u>Attachment 5</u> hereto reflects the result of a conservative radiofrequency propagation analysis assuming a three-watt wireless phone.

granted ETC status by the Commission with respect to the non-rural wire centers attached hereto as **Attachment 1.** See 47 U.S.C. § 214(e)(6).

### IV. Anti-Drug Abuse Certification

No party to this Petition is subject to denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.<sup>14</sup>

### V. <u>High-Cost, Interstate Access. and Interstate Common Line Support Certification</u>

Under Sections 54.313, 54.314 and 54.904 of the Commission's Rules, as well as 47 C.F.R. § 54.809, carriers wishing to obtain universal service support must either be certified by the appropriate state commission or, where the state commission does not exercise jurisdiction, must self-certify with the Commission and the Universal Service Administrative Company ("USAC") as to their compliance with Section 254(e) of the Act. As explained above, the APSC does not exercise jurisdiction over CMRS carriers such as Nextel Partners. Therefore, Nextel Partners has submitted its high-cost, interstate access and interstate common line support certification letters with the Commission and with USAC. Copies of these certifications are attached hereto as Attachment 6. Nextel Partners respectfully requests that the Commission issue a finding that Nextel Partners has met the high-cost, interstate access and interstate common lines support certification requirement and that Nextel Poartners is, therefore, entitled to begin receiving such support, where available, as of the date it receives a grant of ETC status in order that funding will not be delayed. <sup>15</sup>

<sup>&</sup>lt;sup>14</sup> See Declaration of Donald Manning, <u>Attachment 5</u> hereto.

<sup>&</sup>lt;sup>1s</sup> See Guam and Cellular Paging, Inc. Petition for Waiver of FCC Rule Section 54.314, filed February *6*, 2002.

### VI. <u>Conclusion</u>

Because the requirements for eligibility for designation as an eligible telecommunications carrier have been met, Nextel requests that the Commission promptly grant this Petition.

Respectfully submitted,

NPCR, INC. d/b/a NEXTEL PARTNERS

BY

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Counsel for Nextel Partners

Date: April 24, 2003

### **ATTACHMENT 1**

# Designated Areas for which Nextel Partners seeks ETC designation in this Petition

### Non-Rural LEC Wire Centers

### 405211 Southwestern Bell-AR

**OSALTHARMA** 

**OSARKDARMA** 

**OSBAXTARBX** 

**OSBEEBARMA** 

**OSBNTNARMA** 

**OSBNTNARNO** 

**OSBNTVARBV** 

**OSBNTVARCR** 

**OSBRNKARMA** 

**OSCLEVARMA** 

**OSCMDNARSH** 

**OSCNWYARMA** 

**OSCNWYARMY** 

05ELDOARMA

OSFRCYARMA

05FTSMARGL

**OSFTSMARMI** 

**OSFTSMARSU** 

**OSEYVLARHI** 

OSGRDNARMA

OSGRVTARMA

**OSHGHSARMA** 

**OSHOPEARMA** 

OSHTSPARCO

**OSHTSPARLA** 

OSHTSPARNA

OSHTSPARRO

**OSJNBOARMA** 

**OSJSVLARDE** 

**OSLNDLARMA** 

**OSLONKARNB** 

**OSLTRKARCA** 

**OSLTRKAREA** 

05LTRKARFR

**OSLTRKARLO** 

**OSLTRKARMO** 

**OSLTRKARSK** 

**OSLTRKARSW** 

**OSLTRKARTE** 

05LTRKARTO

05LTRKARTU

**OSLTRKARTW** 

**OSLTRKARUL** 

**OSLTRKARVA** 

**OSLTRKARVI** 

05LTRKARWI

**OSLTRKARYO** 

**OSMARNARMA** 

**OSMLTNARFL** 

**OSMLTNARPA** 

**OSMLVRARMA** 

**OSMNTIARMA** 

**OSNTRDARMA** 

**OSOSCLARMA** 

**OSPARNARMA** 

OSPNBLARCH

OSPNBLARJE

**OSPNBLARWC** 

OSPRGLARCE

OSRGRSAREA

OSRGRSARMA

OSSPDLARFO

05SPDLARPL

OSSRCYARMA

OSSTRNARMA

OSVNBRARMA

OSWMMPARMA

# **ATTACHMENT 2**

Declaration of Donald Manning

# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of

| Federa-State Joint Board on |  |
|-----------------------------|--|
| Universal Service           |  |

CC Docket 96-45

### NPCR, INC. d/b/a NEXTEL PARTNERS

| Petition for Designation as an      |  |
|-------------------------------------|--|
| Eligible Telecommunications Carrier |  |
| in the <b>Sate</b> of Arkansas      |  |

### Declaration of Donald Manning

)

I, the undersigned Donald J. Manning, do hereby declare under penalty of perjury as follows:

- 1. I serve as Vice-president and General Counsel for Nextel Partners, Inc. ("Nextel Partners") and each **of** its subsidiary companies, including, but not limited to, NPCR, Inc. d/b/a Nextel Partners.
- 2. NPCR, Inc. is a wholly-owned, operational-arm subsidiary of Nextel Partners Operating Corp., which is a wholly-owned, operational subsidiary of Nextel Partners, Inc.
- 3. Nextel Partners, Inc. is a publicly-traded company with its common stock listed on the Nasdaq market, and is broadly owned by both institutional and individual investors.
- 4. Nextel Partners, Inc.'s President is John Chapple. Vice Presidents include Don Manning, Perry Satterlee, John Thompson, Mark Fanning, and Dave Aas. Entities with 5% or more equity positions with Nextel Partners, Inc. include: Credit Suisse First Boston through several funds held by DLJ Merchant Banking, Madison Dearborn Partners, Wellington Management Co., Eagle River Investments, Motorola, Cascade Investments (an investment company controlled by William H. Gates, III), and Nextel Communications, Inc.
- 5. This Declaration is submitted in support of Nextel Partners' "Petition for Designation As an Eligible Telecommunications Carrier," to which this Declaration is appended.
- 6. I declare and certify as follows, and as described in the aforementioned Petition, that: Nextel Partners offers, or will offer, all of the services designated by the FCC for support pursuant to Section 254(c)(3) of the Act; that Nextel Partners offers, or will offer, the supported services using its own facilities; and that Nextel Partners advertises, or will advertise, the availability of supported services and the charges therefore using media of general distribution as described in the annexed Petition.

- *I*. I further declare that I have reviewed the annexed Petition and that the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge and belief.
- 8. I further declare that to the best of my knowledge, Nextel Partners, including all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or nonvoting) of Nextel as specified in Section 1.2002(b) of the Commission's Rules are not subject to denial of federal benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Donald J. Manning

Vice President and General Counsel NPCR, Inc. d/b/a Nextel Partners

Dated: April 22, 2003

# **ATTACHMENT 3**

Pertinent Provisions of Arkansas Code Annotated

# Chapter 17. Telephone and Telegraph Companies.

### Subchapter 1. General Provisions.

- 23-17-101. Right to construct, operate,.. and maintain lines Damages for occupation of property.
  - 23-17-102. Railroads may operate telegraphs and telephones Authority.
  - 23-17-103. Condemnation proceedings upon failure to secure right-of-way.
  - 23-17-104. Right of entry for construction Liability for damages.
  - 23-17-105. Contract for exclusive privileges prohibited.
  - 23-17-106. Priority of dispatch of messages Confidentiality.
  - 23-17-107. Interception of message Injuring equipment Penalty.
  - 23-17-108. Refusal to transmit message Penalty.
- 23-17-109. Telegraph companies Divulging contents of <u>message</u> Willful refusal to transmit or deliver message Penalty.
  - 23-17-110. Telegraph companies Schedule of rates.
  - 23-17-111. Overcharge by telegraph operators prohibited.
  - 23-17-112. Damages for mental anguish.
- 23-17-113, Telephone service to be supplied without discrimination Complaint to commission.
  - 23-17-114, 23-17-115. [Repealed.]
- 23-17-116. Fee for initiation of residential telephone service to be payable in installments.
  - 23-17-117, 23-17-118. [Repealed.]
- 23-17-119. Surcharges to provide telecommunications for deaf and hearing impaired.
  - 23-17-120. Establishment of calling plans.
  - 23-17-12! . Agreements for special terminating access rates or plans.

## **Subchapter 2. Rural Telecommunications Cooperatives.**

- 23-17-201. Title.
- 23-17-202. Definitions.
- 23-17-203 [Repealed.]
- 23-17-204. Purpose of cooperative.
- 23-17-205. Powers of cooperative.
- 23-17-206. Jurisdiction of Arkansas Public Service Commission.
- 23-17-207. Incorporators.
- 23-17-208. Cooperative names.
- 23-17-209. Articles of incorporation Contents.
- 23-17-210. Articles of incorporation Execution, filing, and recording.
- 23-17-211. Articles of incorporation Amendment.
- 23-17-212. Certificate of incorporation.
- 23-17-2'13. Organizational meeting.
- 23-17-214. Bylaws.
- 23-17-215. Qualifications of members.
- 23-17-216. Membership fees and capital credits.
- 23-17-217. Meetings of members.
- 23-17-218. Board of directors generally.
- 23-17-219. Board of directors Elections Term of office Vacancies.
- 23-17-220. Board of directors Meetings.
- 23-17-221. Officers, agents, and employees.
- 23-17-222. Executive committee.
- 23-17-223. Waiver of notice of meeting.
- 23-17-224. Consolidation.
- 23-1~7,225. Dissolution<sub>2</sub>

- 23-17-226. Filing fees.
- 23-17-227. [Repealed.]
- 23-17-228. Nonprofit operation.
- 23-17-229. Use of revenues.
- 23-17-230. Taxation Exemptions.
- 23-17-231. Mortgage, pledge, or other disposition of property.
- 23-17-232. Recordation of mortgages Effect thereof.
- 23-17-233. Nonliability of members and shareholders for debts of cooperatives.
- 23-17-234. [Repealed.]
- 23-17-235. Liabilities of connecting companies or cooperatives.
- 23-17-236. Construction standards.
- 23-17-237. Limitation of actions.
- 23-17-238. Indemnification of directors, officers, employees, or agents Insurance.
- <u>23-17-239. Standards of conduct for directors Actions taken without board meeting Conflicts of interest.</u>
  - 23-17-240. Unclaimed capital credits.
  - 23-17-241. Opting out of underground damage coverage.
  - 23-17-242. Cooperative acquiring another cooperative.
  - \_\_\_Subchapter 3. Universal Telephone Service Act.
  - 23-17-301. Title.
  - 23-17-302. Legislative findings and declarations.
  - 23-17-303. Definitions.
  - 23-17-304. Universal Telephone Service Fund created Contents.
  - 23-17-305. Conditional effective date.
  - 23-17-306. Allocation of fund,

#### 23-17-307. Administration of fund.

### Suhchdpter 4, Telecommunications Regulatory Reform.

- 23-17-401. Title.
- 23-17-402. Legislative findings.
- 23-17-403. Definitions.
- 23-17-404. Preservation and promotion of universal service.
- 23-17-405. Eligible telecommunications carrier.
- 23-17-406. Electing companies.
- 23-17-407. Regulation of rates for basic local exchange service and switched-access service of electing companies.
  - 23-17-408. Regulatory framework for electing companies.
  - 23-17-40'), Authorization of competing local exchange carriers.
- 23-17-410. Competing local exchange carriers in service areas of rural telephone companies.
  - 23-17-411. Regulatory reform
- 23-17-412. Optional alternative regulation of non-tier one rural telephone companies.
  - 23-17-413. Optional provision of database to vendors.

## 23-17-401. Title.

This subchapter may be referred  $\mathbf{to}$  and cited as the "Telecommunications Regulatory Reform Act of 1997".

History. Acts 1997, No. 77, § 1.

23-17-401. Title.

This subchapter may be referred to and cited as the "Telecommunications Regulatory Reform Act of 1997".

History. Acts 1997, No. 77, § 1.

### 23-17-402. Legislative findings.

It is the intent of the General Assembly in enacting this subchapter to:

- (1) Provide for a system of regulation of telecommunications services, consistent with the federal act, that assists in implementing the national policy of opening the telecommunications market to competition on fair and equal terms, modifies outdated regulation, eliminates unnecessary regulation, and preserves and advances universal service;
- (2) Recognize that a telecommunications provider that serves high-cost rural areas or exchanges faces unique circumstances that require special consideration and funding to assist in preserving and promoting universal service; and
- (3)(A) Recognize differences between the small and large incumbent local exchange carriers, that there are customer-owned telephone cooperatives and small locally owned investor companies, and that it is appropriate to provide incentives and regulatory flexibility to allow incumbent local exchange carriers that serve the rural areas to provide existing services and to introduce new technology and new services in a prompt, efficient, and economical manner.
- **(B)** The General Assembly finds that the commission, when promulgating rules and regulations, should take into consideration the differences in operating conditions in the large and small incumbent local exchange carriers and the burdens placed on small carriers because of regulation.

**History.** Acts **1997**, No. **77**, § 2.

#### 23-17-403. Definitions.

As used in this subchapter:

- (1) "Access line" means a communications facility extending from a customer's premises to a serving central office comprising a subscriber line and, if necessary, a trunk facility;
- (2) "Affiliate" means any entity that, directly or indirectly, owns or controls, is owned or controlled by, or which is under common ownership or control with, another entity. "Owns or controls", for the purpose of this definition, means holding at least a majority of the outstanding voting power;
- (3) "Arkansas IntraLATA Toll Pool" means the unincorporated organization of the Arkansas incumbent local exchange carriers, approved by the commission, whose purpose is to redistribute the pooled revenues from intraLATA toll telephone service;
- (4) "Arkansas Intrastate Carrier Common Line Pool" means the unincorporated organization of the providers of Arkansas telecommunications services, authorized by the commission, whose purpose is to manage billing, collection, and distribution of the incumbent local exchange carrier's intrastate toll common line service revenue requirements;
- (5) "Basic local exchange service" means the service provided to the premises of residential or business customers composed of the following:
  - (A) Voice-grade access to the public switched network, with ability to place and receive calls;
  - (B) Touch-tone service availability;
  - (C) Flat-rate residential local service and business local service:
  - (D) Access to emergency services (911/E911) where provided by local authorities;
  - (E) Access to basic operator services;
  - (F) A standard white-page directory listing;
  - (G) Access to basic local directory assistance;
  - (H) Access to long distance toll service providers; and
- (I) The minimum service quality as established and required by the commission on February 4, 1997;
- (6) "Commercial mobile service" means cellular, personal communications systems and any service regulated pursuant to Part 20 of the rules and regulations of the FCC, 47 C.F.R. Part 20, or any successor provisions;
  - (7) "Commission" means the Arkansas Public Service Commission:
  - (8) "Competing local exchange carrier" or "CLEC" means a local exchange carrier that is not an

incumbent local exchange carrier;

- (9) "Electing company" means a local exchange carrier that elects to be regulated pursuant to §§ 23-17-406 23-17-408;
- (10) "Eligible telecommunications carrier" means the local exchange carrier determined in accordance with § 23-17-205;
- (11) "Embedded investment" means the amount of investment in telephone plant that has already been made by an incumbent local exchange carrier as of February 4,1997;
  - (12) "FCC" means the Federal Communications Commission;
- (13) "Facilities" means any of the physical elements of the telephone plant that are needed to provide or support telecommunications services, including switching systems, cables, fiber optic and microwave radio transmission systems, measuring equipment, billing equipment, operating systems, billing systems, ordering systems, and all other equipment and systems that a telecommunications service provider uses to provide or support telecommunications services;
  - (14) "Federal act" means the Communications Act of 1934, as amended;
- (15) "Government entity" includes all Arkansas state agencies, commissions, boards, authorities, and all Arkansas public educational entities, including school districts, and political subdivisions, including incorporated cities and towns and all institutions, agencies or instrumentalities of municipalities, and county governments;
- (16) "Incumbent local exchange carrier" means, with respect to a local exchange area, a local exchange carrier, including successors and assigns, that is certified by the commission and was providing basic local exchange service on February 8,1996;
- (17) "Interstate access charge pools" means the system, currently administered by the National Exchange Carriers Association, wherein participating local exchange carriers pool billed interstate access revenues:
- (18) "Local exchange area" means the geographic area, approved by the commission, encompassing the area within which a local exchange carrier is authorized to provide basic local exchange services and switched-access services;
- (19) "Local exchange carrier" means a telecommunications provider of basic local exchange service and switched-access service. The term does not include commercial mobile service providers;
- (20) "Network element" means a facility or equipment used in the provision of a telecommunications service. The term also includes features, functions, and capabilities that are provided by means of the facility **or** equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service;
- (21) "Resale" means the purchase of services by one local exchange carrier from another local exchange carrier for the purpose of reselling those services directly or indirectly to an end-user customer:

- (22) "Rural telephone company" means a local exchange carrier defined as a rural telephone company in the federal act as of February 4, 1997;
- (23) "Switched-access service" means the provision of communications between a customer premise and an interexchange carrier's point of interconnection with a local exchange carrier's network for the completion of end-user calls to the public switched network for the origination or termination of interexchange long distance traffic;
- (24) "Telecommunications provider" means any person, firm, partnership, corporation, association, or other entity that offers telecommunications services to the public for compensation;
- (25)(A) "Telecommunications services" means the offering to the public for compensation the transmission of voice, data, or other electronic information at any frequency over any part of the electromagnetic spectrum, notwithstanding any other use of the associated facilities.
- (B) The term does not include radio and television broadcast or distribution services, or the provision or publishing of yellow pages, regardless of the entity providing the services, or services to the extent that the services are used in connection with the operation of an electric utility system owned by a government entity;
- (26)(A) "Tier one company" means any incumbent local exchange carrier that, together with its Arkansas affiliates that are also incumbent local exchange carriers, provides basic local exchange services to greater than one hundred fifty thousand (150,000) access lines in the State of Arkansas on February 4, 1997.
- (B) Changes in designation of an incumbent local exchange carrier, or portions thereof, as a tier one company or non-tier one company may be effected by prior approval from the commission pursuant to § 23-17-411(i); and
- (27) "Universal service" means those telecommunications services that are defined and listed in the definition of basic local exchange service until changed by the commission pursuant to § 23-17-404(e) (3).

**History.** Acts 1997, No. 77, § 3.

#### 23-17-404. Preservation and promotion of universal service.

- (a)(1) The Arkansas Universal Service Fund (AUSF) is established by this section in order to promote and assure the availability of universal service at rates that are reasonable and affordable, and to provide for reasonably comparable services and rates between rural and urban areas.
- (2) The AUSF will provide funding to eligible telecommunications carriers that provide basic local exchange services over facilities owned by the eligible telecommunications carrier.
- (3) The AUSF shall be designed to provide predictable, sufficient, and sustainable funding to eligible telecommunications carriers serving rural or high-cost areas of the state.
- (b)(1) The AUSF is to provide a mechanism to restructure the present system of telecommunication service rates in the state as provided herein, and all telecommunications providers, except as prohibited by federal law, shall be charged for the direct and indirect value inherent in the obtaining and preserving of reasonable and comparable access to telecommunications services in the rural or high-cost areas. The value and utility of access to and interconnection with the public switched network will be lessened if the rural or high-cost areas do not have comparable access and subscribership.
- (2)(A) This AUSF charge for all telecommunications providers shall be proportionate to each provider's Arkansas intrastate retail telecommunications service revenues.
- (B) Because customers of the telecommunications providers that would pay the AUSF charge receive the benefits of a universal network, the telecommunications providers may surcharge their customers to recover the AUSF charges paid by the telecommunications provider. Therefore, the AUSF charge is not a tax, and is not affected by state laws governing taxation.
- (C) For the purpose of assessing mobile telecommunications services, the administrator shall continue to assess only Arkansas intrastate retail telecommunications service revenues and only to the extent such revenues may be considered located in the State of Arkansas in accordance with the Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252.
- (c)(1) The Arkansas Public Service Commission shall delegate to a trustee, the "administrator", the administration, collection, and distribution of the AUSF in accordance with the rules and procedures established by the commission and consistent with this subchapter.
- (2)(A) The administrator shall enforce and implement all rules and directives governing the funding, collection, and eligibility for the AUSF.
- (B) Within sixty (60) days after receipt of a request for AUSF funds, the administrator shall review and determine the accuracy and appropriateness of the request and advise the entity requesting the funds of his or her determination.
- (C) The affected parties shall have thirty (30) days to request reconsideration by the commission of the administrator's determination, and the commission after notice and hearing, if requested, shall issue its opinion on the reconsideration within thirty (30) days after the request of reconsideration.
- (D) Persons aggrieved by the commission's opinion shall have the right to appeal the opinion in accordance with law.

- (d)(1) The AUSF administrator periodically shall establish and notify each telecommunications provider of the AUSF charge levels required to be paid by the telecommunications provider.
- (2) Any telecommunications provider that without just cause fails to pay the AUSF charge that is due and payable pursuant to this section after notice and opportunity for hearing shall have its authority to do business as a telecommunications provider in the State of Arkansas revoked by the commission.
  - (3) The AUSF charge shall not be subject to any state or local tax or franchise fees.
- **(4)** The commission is authorized to increase the AUSF charge by those amounts necessary to recover the cost of administration of the AUSF.
- (e) After reasonable notice and hearing, the commission shall establish rules and procedures necessary lo implement the AUSF. The commission shall implement the AUSF and make AUSF funds available to eligible telecommunications carriers no later than ninety (90) days following the later of February 4, 1997, or the effective date of a Federal Communications Commission order pursuant to 47 U.S.C. § 254 that approves, establishes, or modifies interstate universal service funding. Prior to the implementation and availability of funds from the AUSF, the commission shall not require any local exchange carrier to reduce rates for intrastate switched-access services or require any local exchange carrier to reduce its net revenue received from the Arkansas IntraLATA Toll Pool (AITP). In establishing and implementing the AUSF, the commission shall adhere to the following instructions and guidelines:
  - (1) AUSF funding shall be provided directly to eligible telecommunications carriers;
- (2)(A) After reasonable notice and hearing, the commission may revise the list of universal services, identified in § 23-17-403, that may be supported by the AUSF to establish and maintain end-user rates for universal services that are reasonably comparable between urban and rural areas, or to reflect changes in the type and quality of telecommunications services considered essential by the public, as evidenced, for example, by those telecommunication services that are purchased and used by a majority of single-line urban customers.
- **(B)** The commission shall determine and approve AUSF funding to eligible telecommunications carriers to recover the cost of additions or revisions to the universal service list concurrent with any such revisions to the list of universal services identified in § 23-17-403;
- (3) If the commission establishes or utilizes a minimum or threshold universal service rate, threshold rate, for the purpose of determining the amount of AUSF that an eligible telecommunications carrier may receive, the commission shall adhere to the following requirements:
- (A) A rate case proceeding or earnings investigation or analysis shall not be required or conducted in connection with the determination or implementation of increases in universal service rates associated with commission use of a threshold rate, and the increases shall not be included in the calculation of the basic local exchange service rate increase limits specified in §§ 23-17-407 and 23-3123 nd
- (B) The commission may not require a reduction in universal service rates to a threshold rate unless any associated decrease in revenues is allowed to be concurrently recovered from the AUSF;
  - (4)(A) In the event of a Federal Communications Commission order, rule, or policy pursuant to 47

- U.S.C. § 254(a)(2), the effect of which is to change the federal universal service fund revenues of an incumbent local exchange carrier, the commission shall either increase the rates for basic local exchange service or increase the incumbent local exchange carrier's recovery from the AUSF or a combination thereof to replace the reasonably projected change in revenues. In determining whether to increase basic local exchange service rates or increase the AUSF for a tier one company pursuant to this section, the commission shall take into account that company's rates and consider whether the rates are below the statewide average.
- (B) Any rural telephone company, excluding tier one companies, that, as a result of changes caused by new or existing federal or state regulatory or statutory directives, experiences a change in intrastate or interstate switched-access services revenues or in net revenue received from the intrastate Carrier Common Line Pool, interstate access charge pools, or the Arkansas IntraLATA Toll Pool, shall be allowed to recover the reductions from the AUSF or through modifications in rates applicable to basic local exchange service. The recovered amounts shall be limited to the net reduction in revenues from all sources of support listed in subdivision (e)(4)(A) of this section and this subdivision (e)(4)(B).
- (C) In connection with the receipt of AUSF funds for these changes referred to in subdivisions (e) (4)(A) or (B) of this section, such shall not be conditioned upon any rate case or earnings investigation by the commission. The AUSF administrator shall verify the calculations and accuracy of the net revenue reductions, based on a comparison between:
- (i) The total annual revenues received from these sources by the eligible telecommunications carrier during the most recent twelve (12) months preceding the required regulatory or statutory changes; and
  - (ii) The reasonable projection of total test-year annual revenue after the changes are implemented.
- (D)(i) Except as provided in this subdivision (e)(4)(D), the intrastate Carrier Common Line Pool charges billed to carriers by the Arkansas Intrastate Carrier Common Line Pool (AICCLP) shall be determined as provided in the AICCLP tariff effective on December 31, 2000. Following April 20, 2001, carriers must continue to report RBMOUs associated with the traffic that they reported as of December 2000, except that incumbent local exchange carriers may discontinue reporting RBMOUs associated with their intracompany flat-rated optional plans that exist as of June 1, 2001. The AICCLP charges shall be adjusted to eliminate any credits to the AICCLP or to interexchange carriers that have been previously required.
- (ii)(a) There is hereby created an allocation of AICCLP funds to be known as the "Extension of Telecommunications Facilities Fund".
- (b) A maximum of five hundred thousand dollars (\$500,000) per year of AICCLP funds shall be allocated to fund the Extension of Telecommunications Facilities Fund to assist in the extension of telecommunications facilities to citizens not served by the wireline facilities of an eligible telecommunications carrier.
- (iii)(a) There is also created an AICCLP allocation to be known as the "Arkansas Calling Plan Fund".
- (b) The Arkansas Calling Plan Fund shall receive a maximum of four million five hundred thousand dollars (\$4,500,000) per year to assist in funding the provision of calling plans in telephone exchanges in the state.
- (iv)(a) The Extension of Telecommunicalions Facilities Fund and the Arkansas Calling Plan Fund will be funded by the AICCLP assessing one-half (1/2) of the fund to be paid by incumbent local

exchange carriers (ILECs) and one-half (112) of the fund to be paid by all other telecommunications providers reporting intrastate retail billed minutes of use to the AICCLP.

- (b) ILECs shall be individually assessed in accordance with the proportion that the ILEC funds the AICCLP credits that are being eliminated by this section, and each other telecommunications provider shall be assessed based on its portion of the total non-ILEC intrastate retail billed minutes of use.
- (c) Amounts paid by ILECs to fund either the Extension of Telecommunications Facilities Fund or the Arkansas Calling Plan Fund created by this section shall not be recoverable from the Arkansas Universal Service Fund (AUSF).

The assessments shall commence upon the first day of the month following April 20,2001.

- (2) The first four million dollars (\$4,000,000) shall be allocated monthly as collected to assure that the AUSF has adequate funds to compensate any retroactive claims that may be made against the AUSF due to the change in the test period resulting from the decision in AT&T Communications of the S.W., Inc. v. Arkansas Pub. Serv. Comm'n, 344 Ark. 188, 40 S.W.3d 273 (2001).
- (3) Following the allocation to the AUSF, assessments shall be made with respect to the Extension of Telecommunications Facilities Fund and the Arkansas Calling Plan Fund only to the extent necessary, but not more than the maximum specified in this section, to fund any extensions of facilities or calling plans approved by the Arkansas Public Service Commission in accordance with applicable law and this section.
- (v)(a) AICCLP charges determined and billed through December 2000 shall be considered final and not subject to further true up or adjustment.
- (b) In addition, if an eligible telecommunications carrier was financially harmed by a court-ordered change in the test period applicable for the AUSF funding and an alternate test period was used by the eligible telecommunications carrier for more than one (1) year, then the test period for the harmed eligible telecommunications carrier shall remain the test period originally set by the commission.
- (vi)(a) The commission is authorized to implement, following July 1, 2003, a phase-in reduction of intrastate Carrier Common Line Pool charges until each carrier's charges are equivalent to the carrier's interstate Carrier Common Line charges, including all other federal common line recovery mechanisms such as subscriber line charges, presubscribed interexchange carrier charges, and long-term support.
- (b) Any reduction of intrastate Carrier Common Line Pool charges of incumbent local exchange carriers ordered by the commission shall provide for concurrent recovery of the revenue loss from the AUSF, basic local exchange rates, or a combination thereof;
- (5) All eligible telecommunications carriers may request high-cost funding from the AUSF as necessary in the future to maintain rates for universal services that are reasonable, affordable, and comparable between urban and rural areas. Except as otherwise provided in this subchapter, the funding shall be based on all net investment, including embedded investment, and expenses incurred by the eligible telecommunications carriers in the provision of universal service. High-cost funding shall be provided to eligible telecommunications carriers as needed for the following:
  - (A) Investments and expenses required to provide, maintain, and support universal services;
- (B) Infrastructure expenditures in response to facility or service requirements established by any legislative, regulatory, judicial authority, or governmental entity; and
- (C) For other purposes deemed necessary by the commission to preserve and advance the public education and welfare:

- (6) In identifying and measuring the costs of providing universal services, exclusively for the purpose of determining high-cost funding levels under this subdivision (e)(6), eligible telecommunications carriers shall have the following options:
- (A) The eligible telecommunications carrier may utilize traditional rate case methods and procedures to identify universal service revenue requirements and a residual **AUSF** funding requirement;
- **(B)** The eligible telecommunications carrier may identify high-cost areas within its local exchange area, the area being no smaller than a single exchange or wire center, and perform a fully distributed allocation of cost and identification of associated revenue in order to quantify funding needs for the areas; or
- (C) The commission shall adopt reasonable cost proxies that may be used by an eligible telecommunications carrier for this purpose;
- (7) In calculating revenue requirements only for the purpose of establishing high-cost funding needs from the AUSF, the commission shall not fix depreciation rates. However, the commission may make reasonable adjustments to depreciation expense if an eligible telecommunications carrier's composite depreciation annual accrual rate is greater than the weighted average of composite rates for similar plant and equipment of all other telecommunications providers providing comparable services in the state. In that case, the commission may adjust depreciation expenses of the eligible telecommunications carrier to levels that would not exceed fifteen percent (15%) above a composite accrual rate comparable to the statewide weighted average; and
- (8)(A)(i) The commission shall establish by regulation a grant program to make grants available to eligible telecommunications carriers for the extension of facilities to citizens unserved by wire line services of an eligible telecommunications carrier. Grants may be requested by an eligible telecommunications carrier, unserved citizens, or both.
- (ii) The commission shall delegate to a trustee the administration, collection, and distribution of the Extension of Facilities Fund in accordance with the rules and procedures established by the commission. The trustee shall enforce and implement all rules and directives governing the funding, collection, and eligibility for the fund.
- (B)(i) In establishing regulations for the grant program, the commission shall consider demonstrated need, the length of time the citizens have been unserved, the households affected, the best use of the funds, and the overall need for extensions throughout the state.
- (ii) The commission may require each potential customer to be served by the extension of facilities to pay up to two hundred fifty dollars (\$250) of the cost of extending facilities.
- (C) The plan shall be funded by customer contributions and by the Arkansas Calling Plan Fund established by subdivision (e)(4)(D) of this section.
- (D)(i) The commission shall provide quarterly reports to the Legislative Council. The reports shall include, but shall not be limited to, the number of requests for grants, the number of grants awarded, the amount awarded, and the number of additional customers served.

- (ii) The commission shall notify members of the General Assembly of grants made in their districts.
- (E) In order to allow time for potential applicants to request grants, no grants shall be awarded for three (3) months after the effective date of the rules establishing the program.
- (f) On or within thirty (30) days following the fifth anniversary of February 4, 1997, the commission and the AUSF administrator shall complete and deliver a report on the status and performance of the AUSF to the Legislative Council.
- (g) The current Universal Telephone Service Fund established pursuant to § 23-17-301 et seq. will continue to exist until the AUSF is funded and operational. At that time any funds remaining in the current fund will be transferred to the AUSF, and the current fund will no longer be operational.

History. Acts 1997, No. 77, § 4;2001, No. 907, § 4;2001, No. 1771, § 1;2001, No. 1842, § 1

#### 23-17-405. Eligible telecommunications carrier.

- (a) The incumbent local exchange carrier, its successors and assigns, which owns, maintains, and provides facilities for universal service within a local exchange area on February 4, **1997**, shall be the eligible telecommunications carrier within the local exchange area.
- (b) Where the incumbent local exchange carrier receives AUSF support, except in areas served by rural telephone companies, the Arkansas Public Service Commission, consistent with 47 U.S.C. § 214(e) (2), after reasonable notice and hearing, may designate other telecommunications providers to be eligible for high-cost support pursuant to § 23-17-404 under the following conditions:
- (1)(A) The other telecommunications provider accepts the responsibility to provide service to all customers in an incumbent local exchange carrier's local exchange area using its own facilities or a combination of its own facilities and resale of another carrier's services.
- **(B)** High-cost support under this section will not begin until the telecommunications provider has facilities in place and offers to serve all customers in its service area;
- (2) The telecommunications provider may only receive funding for the portion of its facilities that it owns and maintains:
- (3) The telecommunications provider will not receive AUSF funding at a level higher than the level of funding received by the incumbent local exchange carrier in the same area;
- (4) The telecommunications provider advertises the availability and the charges for the services, using media of general distribution; and
  - (5) It is determined by the commission that the designation is in the public interest.
- (c) In exchanges or wire centers where the commission has designated more than one (1) eligible telecommunications carrier, the commission shall permit a local exchange carrier to relinquish its designation as an eligible telecommunications carrier, consistent with 47 U.S.C. § 214(e)(4), upon a finding that at least one (1) eligible telecommunications carrier will continue to serve the area.
- (d)(1) For the entire area served by a rural telephone company, excluding tier one companies, for the purpose of the AUSF and the federal Universal Service Fund, there shall be only one (1) eligible telecommunications carrier which shall be the incumbent local exchange carrier that is a rural telephone company.
- (2) The rural telephone company may elect to waive its right to be the only eligible telecommunications carrier within the local exchange area by filing notice with the commission.
- (3) If there is more than one eligible telecommunications carrier, an eligible telecommunications carrier may petition the commission and be granted relief from designation as an eligible telecommunications carrier.
- (e) An eligible telecommunications carrier may use commercial mobile services to provide universal services.

History. Acts 1997, No. 77, § 5.

# 23-17-406. Electing companies.

- (a) Any incumbent local exchange carrier may elect to have the rates, terms, and conditions for its telecommunications services determined pursuant to the provisions of this section.
- (b) **An** incumbent local exchange carrier shall file a notice of its intent with the Arkansas Public Service Commission to be an electing company and to be regulated pursuant to this section and §§ 23-17-407 and 23-17-408.
- (c)(1) Upon such a filing, all rates, terms, and conditions for the services provided by that incumbent local exchange carrier contained in the tariffs and end-user contracts that were in effect on the date twelve (12) months prior to the date of election under this section shall be deemed just and reasonable.
- (2) However, nothing herein shall restrict any customer's right to complain to the commission regarding quality of service or the commission's right to enforce any quality of service rules and standards which are equally imposed on all telecommunications providers.
- (d)(1) A rural telephone company, excluding tier one companies, which elects to he regulated pursuant to this section may terminate that election by filing a notice with the commission.
- (2) Upon terminating that election, the rural telephone company for a period of five **(5)** years from the date of the termination notice under this subsection may not elect thereafter to he regulated under this section.

History. Acts 1997, No. 77, § 6.

# 23-17-407. Regulation of rates for basic local exchange service and switched-access service of electing companies.

- (a)(1) The rates for basic local exchange service and switched-access services that were in effect in the date twelve (12) months prior to the date of filing of a notice **of** election by a local exchange carrier pursuant to § 21-17-406 shall be the maximum that the electing local exchange carrier may charge for the services for a period of three (3) years after the date of filing, excluding rate increases ordered by the Arkansas Public Service Commission pursuant to § 23-17-404.
- (2)(A) **An** electing company may decrease or, subsequent to a decrease, increase up to the rate that was effective at the time of election pursuant to this section.
- (B) The rate changes shall be effective immediately, without commission approval, by filing a tariff or notice with the commission.
- (b)(1) After the expiration of the three-year period, the rates for basic local exchange services and switched-access services, excluding the intrastate carrier common line charge, may be adjusted by the electing company filing a price list with the commission, as long as the rates remain at or below the inflation-based rate cap.
- (2) Inflation shall be measured by the year-over-year percent change in the gross domestic product price index calculated by the United States Department of Commerce, or any successor to the index.
- (3) The electing company is authorized to adjust the rate cap for each basic local exchange service and switched-access service by seventy-five percent (75%) of this inflation measure, adjusted for exogenous changes specified in subsection (e) of this section, and excluding rate increases ordered by the commission pursuant to § 23-17-404.
- (4) The rate cap may only be adjusted once each twelve (12) months beginning at the expiration of the three-year period after the date of initial filing to be regulated pursuant to this section and §\$ 23-17-406 and 23-17-408.
- (c) As long as an electing company is in compliance with subsections (a) and (b) of this section, such rates are deemed just and reasonable.
- (d) Notwithstanding the provisions of this section, if, at any time following the three-year anniversary of the date **of** election pursuant to this section, another telecommunications provider is providing basic local exchange service or switched-access service within an electing company's local exchange area, the electing company within any exchange of the electing company in which another telecommunications provider is providing these services may commence determining its rates for basic local exchange service and switched-access services in the same manner that it determines its rates for services other than basic local exchange service and switched-access service, pursuant to § 23-17-408 (c).
- (e) For purposes of this section, the term "exogenous change" shall mean a cumulative impact on a local exchange carrier's intrastate regulated revenue, expenses, or investment of more than three percent (3%) over a twelve-month period, that is attributable to changes in federal, state, or local government mandates, rules, regulations, or statutes.

History. Acts 1997, No. 77, § 7.

### 23-17-408. Regulatory framework for electing companies.

- (a) The earnings of an electing company shall not be subject to rate of return or rate-base monitoring or regulation, and the Arkansas Public Service Commission shall not consider rate of return, rate base, or the earnings of an electing company in connection with rate changes made pursuant to this section or § 23-17-307.
- (b) An electing company is authorized to determine and account for its investments, revenues, and expenses, including depreciation expenses, pursuant to generally accepted accounting principles.
- (c)(1) An electing company may increase or decrease its rates for telecommunications services other than basic local exchange service and switched-access services and establish rates for new services by filing a tariff or a price list with the commission.
  - (2) The rates shall not require commission approval
- (3) The tariff or price list shall be effective upon filing or at a future time as the electing company shall designate.
- (4) So long as rates for services are in accordance with this section and § 23-17-407, the rates are deemed just and reasonable.
- (5) Any service that is not a telecommunications service is not subject to commission regulation, and rates for the services need not be filed with the commission.
- (d) An electing company may package any of its services with any other service it or its affiliates offer, with or without a discount, provided that services whose rates are capped under § 23-17-407 may be purchased separately at the rate which is capped in accordance with § 23-17-407.

History. Acts 1997, No. 77, § 8.

### 23-17-409. Authorization of competing local exchange carriers.

- (a)(1) Consistent with the federal act and the provisions of § 23-17-410, the Arkansas Public Service Commission is authorized to grant certificates of convenience and necessity to telecommunications providers authorizing them to provide basic local exchange service or switched-access service, or both, to an incumbent local exchange carrier's local exchange area if and to the extent that the applications otherwise comply with state law, designate the geographic areas proposed to be served by the applicants, and the applicants demonstrate they possess the financial, technical, and managerial capacity to provide the competing services.
- (2) Competing local exchange carriers shall be required to maintain a current tariff or price list with the commission and to make prices and terms of service available for public inspection.
- (3) Retail prices of competing local exchange carriers shall not require prior review or approval by the commission.
  - (b)(1) A government entity may not provide, directly or indirectly, basic local exchange service.
- (2) After reasonable notice to the public and a public hearing, a governmental entity owning an electric utility system or television signal distribution system may make any telecommunications capacity or associated facilities which it now owns, or may hereafter acquire, available to the public upon terms and conditions as may be established by its governing authority, except the government entity may not use the telecommunications capacity or facilities to provide, directly or indirectly, basic local exchange service.
- (3) Any restriction contained in this subsection shall not be applicable to the provision of telecommunications services or facilities to the extent used solely for 911, E911, other emergency services, educational or medical purposes, or for the provision of telecommunications services or facilities by an educational institution to its students.
- (c) A governmental entity which operates an electric utility system may deny any telecommunications provider access to its electric utility poles, ducts, conduits, or rights-of-way on a nondiscriminatory basis where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.
- (d)(1) Except to the extent required by the federal act and this subchapter, the commission shall not require an incumbent local exchange carrier to negotiate resale of its retail telecommunications services, to provide interconnection, or to sell unbundled network elements to a competing local exchange carrier for the purpose of allowing the competing local exchange carrier to compete with the incumbent local exchange carrier in the provision of basic local exchange service.
- (2) Promotional prices, service packages, trial offerings, or temporary discounts offered by the local exchange carrier to its end-user customers are not required to be available for resale.
- (e) The prices for unbundled network elements shall include the actual costs, including an allocation of joint and common costs and a reasonable profit.
- (f) As provided in 47 U.S.C. §§ 251 and 252, the commission's authority with respect to interconnection, resale, and unbundling is limited to the terms, conditions, and agreements pursuant to which an incumbent local exchange carrier will provide interconnection, resale, or unbundling to a

CLEC for the purpose of the CLEC competing with the incumbent local exchange carrier in the provision of telecommunications services to end-user customers.

- (g)(1) The commission shall approve, as permitted by the federal act, resale restrictions which prohibit resellers from purchasing retail local exchange services offered by a local exchange carrier to residential customers and reselling those retail services to nonresidential customers, or aggregating the usage of multiple customers on resold local exchange services, or any other reasonable limitation on resale to the extent permitted by the federal act.
- (2) The wholesale rate of any existing retail telecommunications services provided by local exchange carriers that are not exempt from 47 U.S.C. § 251(c) and that are being sold for the purpose of resale shall be the retail rate of the service less any net avoided costs due to the resale.
- (3) The net avoided costs shall be calculated as the total of the costs that will not be incurred by the local exchange carrier due to its selling the service for resale less any additional costs that will be incurred as a result of selling the service for the purpose of resale.
- (h) Incumbent local exchange carriers shall provide competing local exchange carriers, at reasonable rates, nondiscriminatory access to operator services, directory listings and assistance, and 911 service only to the extent required in the federal act.
- (i)(1) The commission shall approve any negotiated interconnection agreement or statement of generally available terms filed pursuant to the federal act unless it is shown by clear and convincing evidence that the agreement or statement does not meet the minimum requirements of 47 U.S.C. § 251.
- (2) In no event shall the commission impose any interconnection requirements that go beyond those requirements imposed by the federal act or any interconnection regulations or standards promulgated under the federal act.
- (j) In the event the commission is requested to arbitrate any open issues pursuant to 47 U.S.C. § 252, the parties to the arbitration proceeding shall be limited to the persons or entities negotiating the agreement.

**History.** Acts 1997, No. 77, § 9.

# 23-17-410. Competing local exchange carriers in service areas of rural telephone companies.

- (a) A rural telephone company shall not have any duty to negotiate terms and conditions of or to enter into any agreement for the provision to any other telecommunications provider of interconnection with the rural telephone company's network as provided by 47 U.S.C. §§ 251(c) and 252, including access to its network elements on an unbundled basis, resale of any telecommunications service that the rural telephone company provides at retail to subscribers, or physical collocation, unless and until a telecommunications provider has made a bona fide request to the rural telephone company for the services and the Arkansas Public Service Commission has determined, in accordance with the federal act, that the rural telephone company must fulfill the request.
- (b) With regard to a rural telephone company that is not also a tier one company, the commission may only determine that the rural telephone company must fulfill such a request if after reasonable notice and hearing it is established by clear and convincing evidence that:
  - (1) The request is not unduly economically burdensome;
  - (2) The request is technically feasible; and
- (3) The request is consistent with the protection of universal service and the public interest, convenience, and necessity.
- (c) The commission shall not conclude that clear and convincing evidence exists, as required in subsection (b) of this section, unless the commission has, among other relevant matters, concluded that granting the requested relief will not result in significant adverse impact on any of the following:
  - (1) The customers of the incumbent local exchange carrier serving the area;
- (2) The incumbent local exchange carrier's continuing ability to provide its customers adequate service at reasonable rates;
  - (3) The incumbent local exchange carrier's ability to continue to meet eligible carrier obligations;
  - (4) Statewide average toll rates;
  - (5) Customers' cost of telephone service;
  - (6) The goals of universal service;
  - (7) The quality of service provided to customers;
- (8) The incumbent local exchange carrier's ability to attract capital and incur debt at reasonable rates and the ability to sustain a sufficient revenue stream to pay existing debt;
  - (9) The ability of the exchange to support more than one (1) local exchange carrier; and
  - (10) The interest of all ratepayers.
  - (d) If no order granting the request is entered by the commission within one hundred twenty (120)

days after notice of the request has been filed, the request is denied.

History. Acts 1997, No. 77, § 10.

# 23-17-411. Regulatory reform.

- (a) Regarding the earnings, rates of return, or rate-base calculation of any electing company, any incumbent local exchange carrier that has filed notice in accordance with § 23-17-412, or any competing local exchange carrier, and provided that all such companies and carriers otherwise comply with the applicable ratemaking provisions of this subchapter, the Arkansas Public Service Commission shall not:
- (1) Require the filing of any financial report, statement, or other document for the purpose of reviewing, monitoring, or regulating rate base, earnings, or rates of return; or
  - (2) Conduct any investigation of rate base, earnings, or rates of return.
- (b) Notwithstanding the provisions of this subchapter, a rate group reclassification of an exchange from one (1) rate group to another occurring as a result of access line growth or **loss** of exchange access arrangements shall be allowed by the commission on request of a local exchange carrier.
- (c) Consistent with the policy of telecommunications competition that is implemented with this subchapter, other than the commission's promulgation of rules and regulations required by this subchapter, the commission shall promulgate no new rule or regulation that increases regulatory burdens on telecommunications service providers, except upon a showing that the benefits of such rule or regulation are clear and demonstrable and substantially exceed the cost of compliance by the affected telecommunications service providers.
- (d) Not later than one hundred eighty (180) days after February 4, 1997, the commission shall conduct a rule-making proceeding to identify and repeal all rules and regulations relating to the provision of telecommunications service which are inconsistent with, have been rendered unnecessary by, or have been superseded by either this subchapter or the federal act.
- (e) Not later than one hundred eighty (180) days after February 4, 1997, the commission shall revise its rules so that they apply, except as expressly provided in this subchapter, equally to all providers of basic local exchange service. All future rule changes promulgated by the commission shall apply equally to all providers of basic local exchange service.
- (f) In order to eliminate outdated, unnecessary, and burdensome laws and regulations, electing companies, incumbent local exchange carriers filing notice pursuant to § 23-17-412, and competing local exchange carriers shall not be subject to the requirements of §§ 23-2-304(a)(1), (7), and (8), 23-2-306, 23-2-307, 23-3-101 23-3-107, 23-3-112, 23-3-114, 23-3-118, 23-3-119(a)(2), 23-3-201, 23-3-206, 23-3-301 23-3-316, 23-4-101 23-4-104, 23-4-107, 23-4-109, 23-4-110, 23-4-201(d), 23-4-401 23-4-405, 23-4-407 23-4-419, or the commission's rules and regulations implementing the statutes.
- (g) The commission, except as provided in this subchapter with respect to universal services, shall have no jurisdiction to regulate commercial mobile services or commercial mobile service providers.
- (h) The commission shall establish reasonable cost proxies, which rural telephone companies, excluding tier one companies, may use without producing company-specific cost studies, when cost studies would otherwise be required. Use of these proxies or the adoption of approved rates of nonrural telephone companies by rural telephone companies, excluding tier one companies, shall be deemed adequate proof of such rural telephone company costs.
  - (i) The commission may reclassify an incumbent local exchange carrier as a tier one company or a

non-tier one company only upon petition by the incumbent local exchange carrier in connection with an increase or decrease in the number of the carrier's access lines in the state.

- (j)(1) The unauthorized change of a customer's service to another telecommunications service provider is prohibited.
- (2) **To** protect customers from any unauthorized changes in their choice of telecommunications service providers, no local exchange carrier shall honor a request by any person other than the customer to change the provider of intrastate long distance or local exchange service to the customer in the state, except:
- (A) Where the request is placed by a local or long distance company that has provided to the local exchange carrier a letter **of** agency containing clear and conspicuous disclosure of the change signed by the customer authorizing the change;
- (B) Where the customer affected by the change calls a toll-free number established by the company requesting the change to confirm the request for the change made in response to a contact initiated by the local exchange or long distance company requesting the change; or
  - (C) Where the commission otherwise expressly authorizes.
- (3) Any telecommunications carrier that violates the verification procedures described in this subsection and collects charges for telecommunications services from the customer shall be liable to the carrier previously selected by the customer in an amount equal to all charges paid by the subscriber after the violation in accordance with the procedures that the commission may prescribe.
- **(4)** The commission is also authorized to impose civil penalties, not to exceed five thousand dollars (\$5,000) for any such violation.

History. Acts 1997, No. 77, § 11.

# 23-17-412. Optional alternative regulation of non-tier one rural telephone companies.

- (a)(1) Rural telephone companies, excluding tier one companies, that file notice with the Arkansas Public Service Commission of an election to be regulated in accordance with the provisions of this section are authorized to determine and account for their respective revenues and expenses, including depreciation expenses, pursuant to generally accepted accounting principles, and, except as provided in this section, shall be subject to regulation only in accordance with this section and shall not be subject to any rate review or rate of return regulation by the commission.
- (2) The companies shall file rate lists for their telecommunications services which rates shall be effective upon filing, except the rates for basic local exchange services and switched-access services, which rates shall be effective upon compliance and in accordance with the procedures in this section.
- (3) Any service that is not a telecommunications service is not subject to regulation by the commission, and rates for the services need not be filed with the commission.
- (b) On the effective date of an election pursuant to this section, the tariffed rates of a company electing to be subject to the provisions of this section are deemed just and reasonable and shall continue to be deemed just and reasonable as long as any increases in the company's tariffed rates are in accordance with the provisions of this section.
- (c)(1) The company may increase its basic local exchange service rates after sixty (60) days' notice to all affected subscribers.
- (2) Rates for basic local exchange services may be reduced and be effective immediately upon filing or at a later time specified in the filing.
- (3) Notice by the company to its subscribers shall be by regular mail and may be included in regular subscriber billings and shall include the following:
  - (A) A schedule of the proposed basic local exchange service rate change;
  - **(B)** The effective date of the proposed basic local exchange service rate change; and
- (C) An explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase and the procedure necessary to petition.
  - (d) The subscriber petitions provided for in this section shall he prepared as follows:
  - (1) **Form.**
  - (A) The petition shall be headed by a caption, which shall contain:
  - (i) The heading, "The Arkansas Public Service Commission";
- (ii) The name of the company or cooperative seeking a change in basic local exchange service rates; and
  - (iii) The relief sought.

- (B) A petition substantially in compliance with the form set forth in this subsection shall not be deemed invalid due to minor errors in its form;
- (2) **Body.** The body of the petition shall consist of three (3) numbered paragraphs, if applicable, as follows:
- (A) Allegations of facts. The allegations of facts shall be stated in the form of ultimate facts, without unnecessary detail, upon which the right to relief is based. The allegations shall be stated in numbered subparagraphs as necessary for clarity;
- **(B) Relief sought.** The petition shall contain a brief statement of the amount of the change in basic local exchange service rates that is objected to or other relief sought; and
- (C) **Petitioners.** The petition shall contain the name, address, telephone number, and signature of each subscriber signing the petition. Only the subscriber in whose name the telephone service is listed shall be counted as a petitioner. Every signature must be dated and shall have been affixed to the petition within sixty (60) days preceding its filing with the commission.
- (e)(1) Exclusive of basic local exchange service rate changes pursuant to § 23-17-404, the commission shall have authority to review basic local exchange service rates set by the company only upon a formal petition which complies with subsection (d) of this section and which is signed by at least fifteen percent (15%) of all affected subscribers.
- (2) If a proper petition is presented to the commission within sixty (60) days after the date of notice of the rate change was sent to affected subscribers, the commission shall accept and file the petition and, upon reasonable notice, may suspend the rates and charges at issue during the pendency of the proceedings and reinstate the rates and charges previously in effect and shall hold and complete a hearing thereon within ninety (90) days after filing to determine if the rates as proposed are just and reasonable.
- (3) The commission within sixty (60) days after close of the hearing may enter an order adjusting the rates and charges at issue, except that the commission may not set any rate or charge below the basic local exchange service rates in effect at the time the new rate at issue was proposed.
- (4) A company subject to this section shall not increase its rates without the approval of the commission for six (6) months after the date the commission enters the order.
- (5) If the commission fails to enter any order within sixty (60) days after the close of the hearing, the petition shall be deemed denied and the rates and charges shall be deemed approved for all purposes, including the **purposes of** appeal.
- (f) Rates for switched-access services of companies that are subject to this section shall be determined pursuant to § 23-17-407, except as provided in subsection (1) of this section and § 23-17-404.
- (g) A company subject to this section may at any time file an application with the commission requesting the commission to prescribe just and reasonable rates for the company. Any rate so set may thereafter be adjusted as provided in this section.

- (h) Nothing herein shall restrict any customer's right to complain to the commission regarding quality of service or the commission's authority to enforce quality-of-service rules and standards which are equally imposed on all telecommunications providers.
- (i)(1) The commission on its own motion may review basic local exchange service rates of any company subject to this section if the company has increased the rates by more than the greater of fifteen percent (15%) or two dollars (\$2.00)per access line per month within any consecutive twelvemonth period, excluding rate increases ordered by the commission pursuant to § 23-17-404.
- (2) The commission shall hold and complete a hearing on the rates within ninety (90) days after first giving notice of the hearing to the company to determine if the rates as proposed are just and reasonable.
- (3) The commission within sixty (60) days after close of the hearing may enter an order adjusting the rates and charges at issue, except that the commission may not require the company to set any rate or charge below the greater of the rates in effect at the time of the filing of the increase or the actual cost of providing such service as established by evidence received at the hearing.
- (4) In the order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing which may be paid as a credit against billings for future services.
- (5) If the commission fails to enter any order within sixty (60) thays after the close of the hearing, the rates and charges shall be deemed approved for all purposes, including for purposes of appeal.
- (j)(1) For purposes of this section, the commission may not require a company that is subject to this section to set its rates below the actual cost of the company providing the service.
- (2) If requested by the company, the actual cost shall be determined to include a ratable portion of administrative expenses and overhead incurred by the company in its operations and the appropriate amortization of previously deferred accounting costs.
- (k) No rural telephone company subject to this section may change its basic local exchange service rates within ninety (90) days after entry of a final order adjusting the rate pursuant to subsections (g) and (i) of this section.
- (1) Notwithstanding the provisions of this section, if at any time following the three-year anniversary of the notice provided under this section another telecommunications provider is providing basic local exchange service or switched-access service within a local exchange area of the company subject to this section, the company that is subject to this section may determine its rates for basic local exchange service and switched-access service within any exchange in which another telecommunications provider is providing these services in the same manner that it determines its rates for other services pursuant to subsection (a) of this section.
- (m) A rural telephone company electing to **be** regulated in accordance with this section may package any of its services with any other service it or its affiliates offer, with or without a discount, provided that basic local exchange services and switched-access services may be purchased separately at the rates which are established in accordance with this section.

History. Acts 1997, No. 77, § 12.

# 23-17-413. Optional provision of database to vendors.

In order to assign the place of primary use for mobile telecommunications services pursuant to the Mobile Telecommunications Sourcing Act, **Pub.** L. 106-252, the Director of the Department of Finance and Administration may choose whether to furnish vendors with a database that matches addresses with taxing jurisdictions or to allow vendors to employ an enhanced zip code of at least nine (9) digits in lieu of providing a database.

**History.** Acts 2001, No. 907, § 1.

# **ATTACHMENT 4**

Alltel Mobile Communications Case

Source Legal > <u>States</u> Legal - U S > Arkansas > Cases > \$ AR **State Cases, Combined** (1) Terms **ca97-826** (Edit Search)

63 Ark. App. 197, \*; 975 S.W.2d 884, \*\*; 1998 Ark. App. LEXIS 660, \*\*\*

ALLTEL MOBILE COMMUNICATIONS, INC., ALLTEL NORTHERN ARKANSAS RSA LIMITED PARTNERSHIP, ALLTEL CELLULAR ASSOCIATES OF ARKANSAS LIMITED PARTNERSHIP, ALLTEL CENTRAL ARKANSAS CELLULAR LIMITED PARTNERSHIP, ARKANSAS RSA NO. 2 (SEARCY COUNTY)CELLULAR LIMITED PARTNERSHIP, FT. SMITH MSA LIMITED PARTNERSHIP, FAYETTEVILLE MSA LIMITED PARTNERSHIP, and NORTHWEST ARKANSAS RSA LIMITED PARTNERSHIP, APPELLANTS v. ARKANSAS PUBLIC SERVICE COMMISSION, APPELLEE

#### CA97-826

COURT OF APPEALS OF ARKANSAS, DIVISIONS THREE AND FOUR 63 Ark. App. 197; 975 S.W.2d 884; 1998 Ark. App. LEXIS 660

October 14, 1998, Decided

**NOTICE:** [\*\*\*1] THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECTTO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.

PRIOR HISTORY: AN APPEAL FROM THE ARKANSAS PUBLIC SERVICE COMMISSION.

**DISPOSITION: REVERSED and REMANDED.** 

#### **CASE SUMMARY**

PROCEDURAL POSTURE: Appellant litigants, commercial mobile-service providers, challenged two orders issued by appellee Arkansas Public Service Commission (commission) relating to Act 77 of 1997, the Telecommunications Regulatory Act (Act 77). In order one the commission held that Act 77 did not exempt any telecommunication utility from the specific statutory requirements of Ark...Code Ann. § 23-3-109 (1995 Supp.).

**OVERVIEW:** Order one originated with a motion filed by the staff of the commission to force utilities providing cellular or wireless service to file annual reports to the commission as required by § 23-3-109. Following the commission's order one, the litigants submitted an application for rehearing of order one, arguing that Act 77 eliminated the commission's jurisdiction to regulate commercial mobile-service providers except with respect to universal services. Order two denied the litigants' request for a rehearing and held the litigants were not exempt from § 23-3-109 or § 23-3-110. The court reversed and remanded, holding that: (1)§ 23-3-111(g) terminated the commission's traditional regulatory authority over commercial mobile-service providers except as specifically set forth in Act 77; and (2) where no reference was made in Act 77 to §§ 23-3-109, 23-3-110, the commission no longer had jurisdiction to require the litigants or other commercial mobile-service providers to comply with the aforementioned sections.

**OUTCOME:** The court reversed the commission's orders one and two where the passage of Act 77 eliminated the commission's jurisdiction to require the litigants or other commercial mobile-service providers to file gross earnings reports and pay gross-

earnings fees.

**CORE TERMS:** providers, mobile-service, universal, telecommunication, annual, staff, gross-earnings, exempt, mobile, universal-service, regulation, legislative intent, administering, repeal, gross earnings, Telecommunications Regulatory Reform Act, authority to require, eliminated, construe, cellular, payment of fees, preservation, annually

# LexisNexis(TM) HEADNOTES - Core Concepts - ◆ Hide Concepts

Communications Law > Telephony > Cellular, Mobile & Wireless Carriers

HN1 Ark. Code Ann. §§ 23-3-109, 23-3-110 are included in the general provisions portion of the Arkansas Code that addresses regulation of utilities, generally. The language of § 23-3-109(a) provides that annually each utility subject by law to the payment of fees or charges under the jurisdiction of either the Arkansas Public Service Commission (Commission) or the Arkansas State Highway and Transportation Department shall prepare and transmit to the Commission having jurisdiction over the utility a certified statement of the gross earnings from its properties in Arkansas for the preceding calendar year ending December 31. Section 23-3-110(a)(1) provides: There is levied and charged and there shall be collected annually from each utility subject by law to the payment of fees or charges under the jurisdiction of either the Commission or the State Highway and Transportation Department a fee in an amount which shall be equivalent to that proportion of the total utilities costs that the gross earnings of each of the utilities bear to the total gross earnings of all utilities.

Communications Law > Telephony > Cellular, Mobile & Wireless Carriers
Communications Law > Related Leaal Issues

\*Ark. Code Ann. § 23-3-102 of the Act 77 of 1997, the Telecommunications Regulatory Act (Act) recites the "Legislative Findings": It is the intent of the general assembly in enacting this Act to: (1) Provide for a system of regulation of telecommunications services, consistent with the Federal Act, that assists in implementing the national policy of opening the telecommunications market to competition on fair and equal terms, modifies outdated regulation, eliminates unnecessary regulation, and preserves and advances universal service. Section 23-3-111 of the Act is titled "Regulatory Reform," and § 23-3-111(g) provides: The Arkansas Public Service Commission, except as provided in this Act with respect to universal services, shall have no jurisdiction to regulate commercial mobile services or commercial mobile service providers.

Governments > Legislation > Interpretation

laws. Repeals by implication do transpire when there exists an invincible repugnancy between the earlier and latter statutory provisions. The first rule in considering the meaning of a statute is to construe it just as it reads, giving words their common and usually accepted meaning in common language. The primary object is to carry out the legislative intent which is determined primarily from the language of the statute considered in its entirety. In interpreting a statute and attempting to construe legislative intent, the appellate court looks to the language of a statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, legislative history, and other appropriate means that throw light on the subject. Where the language of a statute is plain and unambiguous, the appellate court gives the language its plain and ordinary meaning and determines legislative intent from the language used.

Communications Law > Telephony > Cellular, Mobile & Wireless Carriers

Communications Law > Related Legal Issues

HN4 Ark. Code Ann. § 23-3-104 of the Act 77 of 1997, the Telecommunications Regulatory Act (Act) covers the "Preservation and Promotion of Universal Service" and establishes the Arkansas Universal Service Fund (AUSF) to promote and assure the availability of universal service at rates that are reasonable and affordable. Section 23-3-104(b) requires the AUSF to provide a mechanism to restructure the present system of telecommunication service rates in the State, and requires that all telecommunications providers, except as prohibited by federal law, shall be charged for the direct and indirect value inherent in the obtaining and preservation of reasonable and comparable access to telecommunication in the rural or high-cost areas. Subsection (c) delegates to a trustee (Administrator) the administration, collection, and distribution of the AUSF, and section (d) authorizes the Commission to increase the AUSF charge by those amounts necessary to recover the cost of administration of the AUSF. There is no other language in the Act that allows the Arkansas Public Service Commission to charge or assess commercial mobile-service providers a fee other than that contained in 23-3-104(d),

Governments > Legislation > Interpretation

HN5 A general statute must yield when there is a specific statute involving the particular subject matter. A statute should be construed so that no word is void, superfluous, or insignificant, and meaning and effect must be given to every word contained therein, if possible.

JUDGES: ROBBINS, C.J., and JENNINGS, BIRD, STROUD, and MEADS, JJ., agree.

OPINION: [\*198] [\*\*885]

This appeal involves the interpretation of Act 77 of 1997, the Telecommunications Regulatory Reform Act. as it relates to the Arkansas Public Service Commission's authority to require appellants and other commercial mobile-service providers to comply with Ark. Code Ann. §§ 23-3-109 (Supp. 1997) and 23-3-110 (Supp. 1997). Appellants contend that the passage of Act 77 eliminated the Commission's jurisdiction to require them and other commercial mobile-service providers to file gross-earnings reports and pay gross-earnings fees as provided by sections 23-3-109 and 110. We agree and reverse Commission Orders No. 1 and 2.

This docket originated with a motion filed by the staff of the Arkansas Public Service Commission (Staff) to force utilities providing cellular or wireless service to file annual reports with the Commission as required by section 23-3-109 (section 109). Staff's motion explained that some cellular utilities [\*\*\*2] had informed Staff that Act 77 exempts them from the annual gross-earnings report requirement, and Staff therefore was requesting that the Commission determine the question. Less than a month later, the Commission entered Order No. 1, which held that "Act 77 of 1997 does not exempt any telecommunication utility from the specific [\*199] statutory requirements of Ark. Code Ann. § 23-3-109 (1995) Supp.)" and that Staff's uncontested motion should be and is hereby granted.

Following the entry of Order No. 1, eight commercial mobile-service providers, referred to collectively in this opinion as Alltel, appeared solely for the purpose of submitting an application for rehearing of Order No. 1. Alltel argued that the Commission's holding in Order No. 1 was erroneous, because the passage of Act 77 eliminated the Commission's jurisdiction to regulate commercial mobile-service providers except with respect to universal services. Alltel further argued that the Commission's limited jurisdiction over commercial mobileservice providers did not justify requiring the section 109 reports. Although Staff had argued in its motion that the section 109 reports were necessary for the Commission to carry out its

[\*\*\*3] statutory mandate with regard to the Arkansas Universal Service Fund established by Act 77, Alltel argued that the information included in the section 109 report was in direct conflict with the information required by Act 77 and, therefore, not relevant to the universal-service jurisdiction of the Commission.

Order No. 2 entered by the Commission in lune 1997 denied Alltel's request for a rehearing. The Commission held that Alltel was not exempt from section 109, and it also held that it was not exempt from section 23-3-110 (section 110), which requires utilities to [\*\*886] pay an annual gross-earnings fee. Alltel filed a timely notice of appeal from Orders No. 1 and 2, and Southwestern Bell Mobile Systems, Inc., and others (Amici) were granted permission by this court to file an amici curiae brief in this proceeding.

Appellants, Alltel and Amici, contend that, as a result of the passage of Act 77 and specifically section 11(g), the Commission no longer has authority to require commercial mobile-service providers to submit an annual gross-earnings statement or pay a fee as required by sections 109 and 110. \*\*Sections 109 and 110 are included in the general provisions portion of the Arkansas [\*\*\*4] Code that addresses regulation of utilities, generally. The pertinent language of section 109(a) provides that "annually... each utility subject by law to the payment of fees or charges under the jurisdiction [\*200] of either the [Commission] or the Arkansas State Highway and Transportation Department shall prepare and transmit to the Commission having jurisdiction over the utility a certified statement of the gross earnings from its properties in Arkansas for the preceding calendar year ending December 31." Section 110(a)(1) provides:

There is levied and charged and there shall be collected annually from each utility subject by law to the payment of fees or charges under the jurisdiction of either the Arkansas Public Service Commission or the State Highway and Transportation Department a fee in an amount which shall be equivalent to that proportion of the total utilities costs that the gross earnings of each of the utilities bear to the total gross earnings of all utilities.

Act 77 of 1997, the Telecommunications Regulatory Reform Act, became effective by its emergency clause on February 4, 1997. \*\*Section 2 of the Act recites the "Legislative Findings":

It [\*\*\*5] is the intent of the General Assembly in enacting this Act to:(1)
Provide for a system of regulation of telecommunications services, consistent with the Federal Act, that assists in implementing the national policy of opening the telecommunications market to competition on fair and equal terms, modifies outdated regulation, eliminates unnecessary regulation, and preserves and advances universal service.

Section 11 of the Act is titled "Regulatory Reform," and subsection (g) provides: "The Commission, except as provided in this Act with respect to universal services, shall have no jurisdiction to regulate commercial mobile services or commercial mobile service providers." Appellants argue that the unambiguous language of section 11(g) removes the Commission's jurisdiction to regulate them except as specifically provided for in Act 77 with regard to universal services.

The Commission acknowledges that section 11(g) removes the Commission's jurisdiction to

regulate commercial mobile service on issues not related to universal services. Instead, it contends that it can still require the annual assessment under sections 109 and 110 because these assessments are needed [\*\*\*6] to recover its cost of [\*201] administering universal services. The Commission maintains that it has numerous regulatory responsibilities over universal services and that the section 110 assessment funds these responsibilities. The Commission concludes that section 11(g) should be read harmoniously with sections 109 and 110 by construing section 11(g) to exempt commercial mobile-service providers from the Commission's nonuniversal-service regulatory jurisdiction but continue to require commercial mobile-service providers to pay section 110's annual assessment to cover the Commission's universal-services costs. \*\*HN3\*\*\*Courts\* presume that the legislature passes laws with full knowledge of existing laws. See \*\*Moncus v\*\*, Raines, 210 Ark. 30, 194 S.W.2d 1(1946). The Commission further notes that sections 109 and 110 are not expressly repealed by section 11 (g) and reminds this court that repeals by implication are not favored. \*\*See \*\*Board of \*\*Trustees\* v\*\*, Stodola\*\*, 328 Ark. 194, 942 S.W.2d 255 (1997); Donoho v\*\*. Donoho, 318 Ark. 637, 887 S.W.2d 290 (1994).

Although the legislature did not expressly repeal sections 109 and 110 in Act 77, Act 77 does unambiguously limit the Commission's universal-service [\*\*\*7] jurisdiction to what is provided in Act 77. Repeals by [\*\*887] implication do transpire when there exists an invincible repugnancy between the earlier and latter statutory provisions. See Board of Trustees v. Stodola, supra. The first rule in considering the meaning of a statute is to construe it just as it reads, giving words their common and usually accepted meaning in common language. See Bryant v. Arkansas Pub. Serv. Comm'n, 53 Ark. App. 114, 919 S.W.2d 522 (1996); see also Arkansas Vinegar Co. v. Ashby, 294 Ark. 412, 743 S.W.2d 798 (1988). The primary object is to carry out the legislative intent which is determined primarily from the language of the statute considered in its entirety. Arkansas Charcoal Co. v. Arkansas Pub. Serv. Comm'n, 26 Ark. App. 202, 762 S.W.2d 403 (1988), aff'd in part, rev'd in part, 299 Ark. 359, 773 S.W.2d 427 (1989). In interpreting a statute and attempting to construe legislative intent, the appellate court looks to the language of a statute, the subject matter, the object to be accomplished, the purpose to be served, the remedy provided, legislative history, and other appropriate means that throw light on the subject. McCoy v. Walker,. [\*\*\*8] 317 Ark. 86, 876 S.W.2d 252 (1994). Where the language of a statute is plain and unambiguous, [\*202] the appellate court gives the language its plain and ordinary meaning and determines legislative intent from the language used. Leathers v. Cotton, 332 Ark. 49, 961 S.W.2d 32 (1998); Omega Tube & Conduit Corp. v. Maples, 312 Ark. 489, 850 S.W.2d 317 (1993).

Section 11(q) limits the Commission's authority to regulate commercial mobile service and commercial mobile-service providers to universal services "as provided in this Act." (Emphasis added.) One of the stated legislative intents of Act 77 is to preserve and promote universal service. \*\*Section 4 of Act 77 covers the "Preservation and Promotion" of Universal Service" and establishes the Arkansas Universal Service Fund (AUSF) to promote and assure the availability of universal service at rates that are reasonable and affordable. Section 4(b) requires the AUSF to provide a mechanism to restructure the present system of telecommunication service rates in the State, and requires that all telecommunications providers, except as prohibited by federal law, shall be charged for the direct and indirect value inherent in the obtaining [\*\*\*9] and preservation of reasonable and comparable access to telecommunication in the rural or high-cost areas. Subsection (c) delegates to a trustee (Administrator) the administration, collection, and distribution of the AUSF, and section (d) authorizes the Commission "to increase the AUSF charge by those amounts necessary to recover the cost of administration of the AUSF." There is no other language in Act 77 that allows the Commission to charge or assess commercial mobile-service providers a fee other than that contained in section 4(d).

Despite the Commission's argument that the fees assessed pursuant to sections 109 and 110 are necessary to pay its costs of administering universal service, section 4(d) of Act 77

specifically addresses recovery of the costs of administering the AUSF. It is a well-recognized principle of statutory construction that HN5 a general statute must yield when there is a specific statute involving the particular subject matter. Board of Trustees v. Stodola, supra; Acme Brick Co. v. Arkansas Pub. Serv. Comm'n, 227 Ark. 436, 299 S.W.2d 208 (1957). Furthermore, section 11(g) limits the Commission's universal-service jurisdiction to "as provided in [Act [\*\*\*10] 77]." A statute should be construed so that no word is void, [\*203] superfluous, or insignificant, and meaning and effect must be given to every word contained therein, if possible. See Locke v. Cook, 245 Ark. 787, 434 S.W.2d 598 (1968).

By its clear wording, section 11(g) terminated the Commission's traditional regulatory authority over commercial mobile-service providers except as specifically set forth in Act 77. No reference is made in Act 77 to sections 109 and 110. Accordingly, the Commission no longer has jurisdiction to require commercial mobile-service providers to comply with these sections, and Orders No. 1 and No. 2 are reversed.

Reversed and remanded.

ROBBINS, C.J., and IENNINGS, BIRD, STROUD, and MEADS, JJ., agree.

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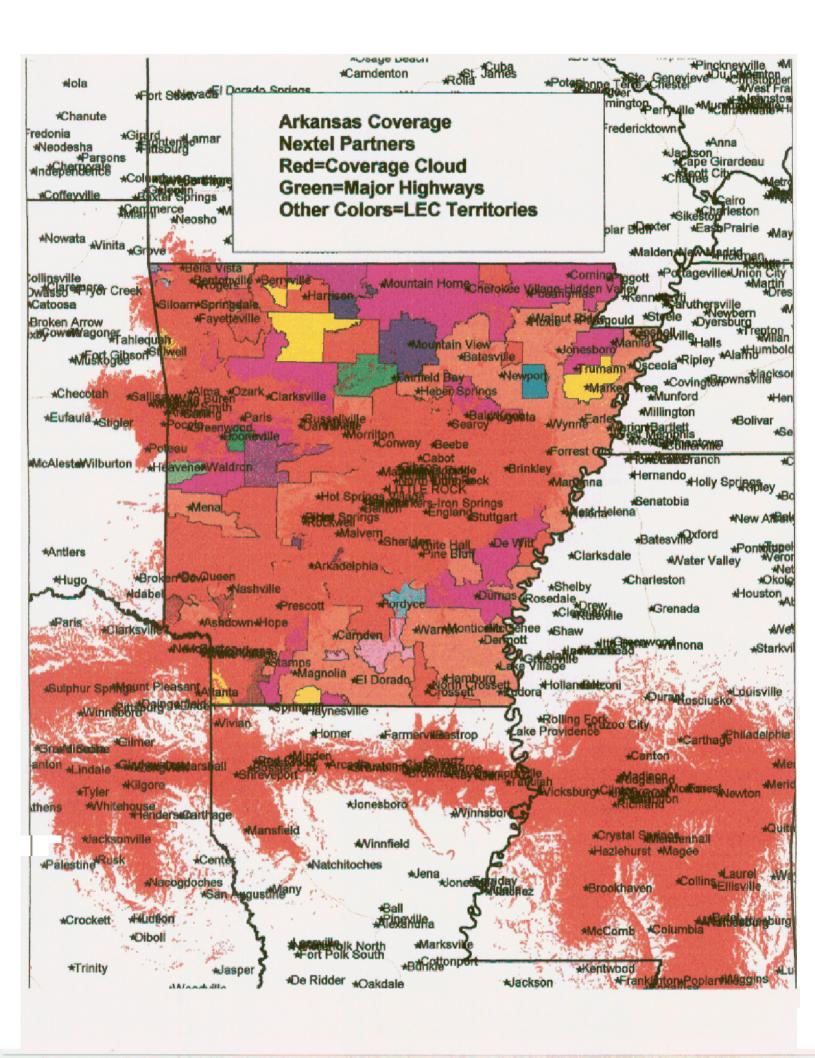
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# ATTACHMENT 5

Map of Nextel Partners' coverage areas in the State of Arkansas



# **ATTACHMENT 6**

Certification Letters to FCC and  $\boldsymbol{USAC}$ 

# March 27,2003

# Via FedEx

Irene M. Fiannery

VP—High Cost and Low Income Division

USAC

2120 L Street, NW, Suite 600

Washington, DC 20037

Marlene H. Dortch Office of the Secretary FCC 445 – 12<sup>th</sup> Street, SW Washington, DC 20554

Re: CC Docket No. **96-45** 

**High Cost** Loop Support Initial Certification Filing

This is to certify pursuant to 47 C.F.R. 5554.313 and 54.314 that NPCR, Inc., d/b/a Nextel Partners, will **use** any Universal Service High **Cost** Loop Support received in 2003 only for **the** provision, maintenance, **and** upgrading of facilities **and** services for which the support is intended.

I am authorized to make this certification on behalf of Nextel Partners. This certification is for the following study areas in the State L. Arkansas:

| Is for the following study aleas in the State L. Alkansas: |                                     |
|--|-------------------------------------|
| 401 142 Centurytel NW AR-Rus                               | 401710 Magazine Tel Co.             |
| 401 143 Centurytel NW AR-Sil                               | 401712 Mountain View Tel Co.        |
| 401144 Centurytel -Central AR                              | 401718 Prairie Grove Tel Co         |
| 401691 Alltel Arkansas Inc.                                | 401720 Centurytel-Redfield          |
| 401692 Arkansas Tel Co                                     | 401721 Rice Belt Tel Co.            |
| 401697 Central Arkansas Tel                                | 401724 SW Arkansas Tel Coop         |
| 401698 Cleveland County Tel                                | 401727 Centurytel-SouthArkansas     |
| 401699 Decatur Tel Co Inc.                                 | 401729 Walnut Hill <b>Tel</b> . Co. |
| 401702 South Arkansas Tel                                  | 401734 Yell County Tel Co.          |
| 401704 Lavaca Tel Co.AR                                    | 403031 Scott County Tel Co.         |
| 401705 Centurytel Arkansas                                 |                                     |
| 401709 Madison County Tel.                                 |                                     |

Brent G. Eilefson, Corporate Counsel NPCR, Inc. d/b/a Nextel Partners

10120 West 76<sup>th</sup> Street Eden Prairie, MN 55344

952-238-2572

#### March 27,2003

Irene M. Flannery

VP—High Cost and Low Income Division

USAC
2120 L Street, NW, Suite 600

Washington, DC 20037

Marlene H. Dortch Office of the Secretary FCC 445 – 12<sup>th</sup> Street, SW Washington, DC 20554

Re: CC Docket No. **96-45** 

Interstate Access Support - IAS

**Initial Certification Filing** 

This is to certify pursuant to 47 C.F.R. **854.809** that NPCR, Inc., d/b/a Nextel Partners, will use any Universal Service Interstate Access Support received in 2003 only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

I am authorized to make this certification on behalf of Nextel Partners. This certification is for the following study areas in the State of Arkansas:

**4052**11 BellSouth

Brent G. Eilefson, Corporate Counsel NPCR, Inc. d/b/a Nextel Partners

10120 West 76 Street Eden Prairie, MN **55344** 

952-238-2572

# March 27,2003

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Marlene H. Dortch Office of the Secretary FCC 445 – 12''Street, SW Washington, **DC** 20554

Re: CC Docket No. 96-45

Interstate Access Support - IAS

**Initial Certification Filing** 

This is to certify pursuant to 47 C.F.R. 954.809 that NPCR, Inc., d/b/a Nextel Partners, will use any Universal Service Interstate Access Support received in 2003 only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

I am authorized to make this certification on behalf of Nextel Partners. This certification is for the following study areas in the **State** of **Arkansas:** 

**405211** BellSouth

Brent . 'lefson, Corporate Counsel NPCR, Inc. d/b/a Nextel Partners 10120 West 76<sup>th</sup> Street Eden Prairie, MN 55344 952-238-2572

# **CERTIFICATE OF SERVICE**

The undersigned, an attorney in the law firm of Catalano & Plache, PLLC hereby certifies that on this 24th day of April, 2003, a true and correct photocopy of the foregoing "Petition" was sent to the following persons:

Richard Smith
Accounting Policy Division
Federal Communications Commission
445 12<sup>th</sup> Street, SW
Room 5-A660
Washington, DC 20554
(By hand delivery)

Paul Garnett, **Esq.**Wireline Competition Bureau
Telecommunications Access Policy Division
Federal Communications Commission
445 12<sup>th</sup> Street, SW
Room 5-C-315
Washington, DC 20554
(By hand delivery)

Ronald J. Jarvi